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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,)	CASE NO. CR 19-00157 HSG
15)	
16 Plaintiff,)	
17)	UNITED STATES' SENTENCING
18 v.)	MEMORANDUM
19)	
20 SANDFORD BEMI FAISON,)	
21)	Date: August 26, 2019
22 Defendant.)	Time: 2:00 p.m.
)	Court: Hon. Haywood S. Gilliam
)	
)	

23 INTRODUCTION

24 On June 7, 2019, Sanford Bem Faison pled guilty to the sole count of his Indictment alleging a
25 violation of 18 U.S.C. §§ 229(a)(1) and (a)(2) (Attempt to Acquire a Chemical Weapon). The plea was
26 made pursuant to written agreement according to Rule 11(c)(1)(C) of the Federal Rules of Criminal
27 Procedure. For the reasons set forth below, the Government requests that the Court impose the

1 following sentence: (1) a prison sentence at the high end of the applicable guideline range, namely 71
2 months; (2) five years of supervised release with the conditions and recommendations set out in the
3 Presentence Investigation Report (“PSR”); and (3) a \$100 mandatory special assessment. The United
4 States seeks an upper guideline range sentence because of the severity and calculated nature of the
5 offense. Such a sentence would be sufficient, but not greater than necessary, to achieve the sentencing
6 goals of 18 U.S.C. §3553(a).

7 DISCUSSION

8 A. The Offense Conduct and Procedural History

9 The government adopts the factual and procedural statements made in the PSR ¶¶ 1-12.

10 B. The Legal Standard at Sentencing

11 Under Ninth Circuit case authority, the Court should impose a sentence sufficient, but not greater
12 than necessary, to reflect the purposes of sentencing that Congress identified in 18 U.S.C. § 3553(a).
13 *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008). The Court should begin the process of
14 determining an appropriate sentence by calculating the correct Guidelines range. *Id.*

15 Although the Guidelines are not binding, they “reflect a rough approximation of sentences that
16 might achieve section 3553(a)’s objectives.” *United States v. Rita*, 127 S. Ct. 2456, 2464 (2007). The
17 Guidelines range will be the starting point and the initial benchmark for the sentence. *Carty*, 520 F.3d at
18 991. The Court should keep the Guidelines range in mind throughout the process, allow the parties to
19 argue for a sentence they believe is appropriate, and consider the factors identified in 18 U.S.C.
20 § 3553(a). *Id.*

21 Rule 11(c)(1)(C) permits the defendant and the prosecutor to agree that a specific sentence is
22 appropriate, but that agreement does not discharge the district court's independent obligation to exercise
23 its discretion. *Freeman v. United States*, 564 U.S. 522, 529 (2011). If the Court imposes a sentence
24 outside the Guidelines range, it should ensure that its justification for deviating from the range is
25 sufficiently compelling to support the degree of variance in the sentence that it imposes. *Carty*, 520
26
27

1 F.3d at 991. The Court should make an individualized determination based on the facts of each case.

2 *Id.* The Court, however, is not required to raise every possible relevant issue sua sponte. *Id.*

3 C. The Correct Guidelines Range is 57-71 Months

4 1. The Guidelines Calculation

5 The government concurs with the Probation Officer's determination of the applicable sentencing
6 guideline range in this case. PSR at ¶¶ 23-33. The government believes that the following Sentencing
7 Guidelines calculation is correct:

8	a. Base Offense Level: U.S.S.G. § 2M6.1(a)(2):	28
9	b. Acceptance of Responsibility: U.S.S.G. § 3E1.1(a)	-2
10	c. Acceptance of Responsibility: U.S.S.G. § 3E1.1(b)	-1
11	d. Adjusted Offense Level:	25

12
13 2. The Defendant's Criminal History Category is CHC I

14 The government agrees that the defendant's criminal history score of zero yields a Criminal
15 History Category of I. (PSR ¶¶ 37-38.)

16 3. The Correct Guidelines Range is 57-71 Months

17 The applicable Guidelines Range for Offense Level 25 and Criminal History Category I is 57-71
18 months. *See* U.S.S.G. § 5A (Sentencing Table). Because the Guidelines Range is in Zone D, the
19 minimum term of a Guideline sentence must be satisfied by a sentence of imprisonment. U.S.S.G. §
20 5C1.1(f).

21 D. A Sentence of 71 Months Satisfies the Statutory Factors Set Forth in § 3553(a)

22 18 U.S.C. § 3553(a) directs the Court to impose a sentence sufficient, but not greater than
23 necessary, to comply with the purposes set forth therein. The enumerated 3553(a) factors warrant a
24 lengthy sentence of incarceration, including the need to consider the nature and circumstances of the
25 offense, to afford adequate deterrence to criminal conduct, and to protect the public from further crimes
26 from the defendant. *See* 18 U.S.C. 3553(a)(2)(A)-(C). The conduct at issue in this case is both shocking
27 in its purpose and shameless in its undertaking. The defendant, in a premeditated, and detached, almost

1 analytical fashion, attempted to obtain a horribly toxic chemical for surreptitious use against the mother
2 of his children. He took precautionary and purposeful steps to avoid legal responsibility for his crime
3 including, conducting his transaction in an anonymous portion of the Internet, using an alias, encrypted
4 messaging, cryptocurrency, a 'cut-out' or innocent third party to take initial possession of the purported
5 chemical, and a 'drop' address.

6 As noted above, Defendant's sentence at the high end of the applicable guideline range would
7 consequently take into account the need to promote respect for the law, afford adequate deterrence to
8 criminal conduct, and protect the public from further crimes of the defendant.

9 The government further notes that but for the determined actions of law enforcement, the
10 defendant's illegal plan might have come to fruition. As set forth below, the government believes that a
11 sentence of 71 months is sufficient, but not greater than necessary, to comply with the statutory
12 sentencing objectives in this case.

13 CONCLUSION

14 For the reasons set forth above, as well as those set forth in the PSR, the government respectfully
15 requests that the Court sentence the defendant to a term of 71 months of imprisonment, followed by a 5
16 year term of supervised release, and the eleven additional recommended conditions outline in the PSR¹
17 including but not limited to a non-contact order with the intended victim, restricted and supervised use
18 of computers and computer-related devices, a search condition, and mental health counselling.

19 DATED: August 16, 2019

Respectfully submitted,

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21 United States Attorney

22 /s/
23 PHILIP J. KEARNEY
24 Assistant United States Attorney
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27 ¹ Sentencing Recommendation, pages 3-4.